

COMMITTEE STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No.
the Avenal Energy Project) 08-AFC-1
)
)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

MONDAY, MARCH 23, 2009

2:35 P.M.

Reported by:
Peter Petty
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey Byron, Presiding Member

HEARING OFFICER AND ADVISORS

Gary Fay, Hearing Officer

Kristy Chew, Advisor

David Hungerford, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Senior Staff Counsel

Ivor Benci-Woodward, Siting Project Manager

PUBLIC ADVISER

Nick Bartsch

APPLICANT

Jane E. Luckhardt, Attorney
Downey Brand Attorneys, LLP

Jim Rexroad, Vice President
Avenal Power Center, LLC

INTERVENOR

Loulana A. Miles, Attorney
Adams, Broadwell, Joseph and Cardozo
representing California Unions for Reliable Energy

ALSO PRESENT

Anna Martinez (via teleconference)
Green Action

Ray Leon (via teleconference)
Latino Policy Project

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Overview	1
Presentations	2
Applicant	2
CEC Staff	7
Intervenor CURE	13
Public Comment	14
Schedule	25
Closing Remarks	31
Hearing Officer Fay	31
Adjournment	32
Reporter's Certificate	33

P R O C E E D I N G S

2:35 p.m.

HEARING OFFICER FAY: This is a status conference being held by the Siting Committee in the Avenal Energy project. To my left is Presiding Commissioner Jeff Byron. And to my right is David Hungerford representing Art Rosenfeld. And to Commissioner Byron's left is Kristy Chew, his Advisor. My name is Gary Fay; I'm the Hearing Officer on the case.

Before we open -- we have nothing from us. The reason we called this was to get the parties together to look at the schedules. There's quite a divergence in schedule recommendations that has actually increased since we sent the notice out. So we want to talk to the parties about their plans on that.

And hear from the staff about how they intend to implement the greenhouse gas report put out by the Committee. I talked briefly with Ms. DeCarlo this afternoon on a procedural level about that, and hope that she'll elaborate some of what we discussed.

So, we'll start with the applicant.
Ms. Luckhardt.

1 MS. LUCKHARDT: What we're asking for
2 here is that the Committee set a schedule for the
3 remainder of the hearing, for the remainder of
4 this proceeding.

5 And so, you know, I think one of the
6 considerations in setting the schedule is the
7 additional work that we also understand that staff
8 is proceeding with in response to the greenhouse
9 gas report from the Siting Committee.

10 But we also see very few issues in this
11 case. And so we don't want the schedule to be set
12 out so far based on simply this report. The rest
13 of the items, there are a few items that I believe
14 that CURE still has concerns and issues about, but
15 based on the preliminary staff assessment workshop
16 that we had, we don't believe there are additional
17 issues between the staff and the applicant that
18 need to be resolved before we go to an FSA or
19 before we go to hearing.

20 And so we would propose on going forward
21 on a schedule that we definitely try and move the
22 schedule along so that we can proceed with this
23 case. And also not hold up the entire schedule
24 for the greenhouse gas report. I think there's an
25 analysis being done by MRW.

1 And so we would propose that we at least
2 -- that the staff assessment should go no later
3 than what is being proposed for Carlsbad, which I
4 believe is also waiting for this MRW report. And
5 I believe they have a mid-May date for an FSA.

6 We would also propose that we set dates
7 that are the same for applicant's evidence being
8 filed. Based on our discussions with staff
9 regarding the PSA, we don't feel it's necessary
10 for the applicant to wait to see the FSA before we
11 file our testimony in this case.

12 Applicant's testimony would consist of,
13 at least as far as we know at this point,
14 everything that has been previously filed. We
15 have no issues that we are aware of that are in
16 contention with staff. So we're not waiting for
17 the FSA, then to file responsive testimony. We
18 could do that in rebuttal if there are any
19 outstanding issues.

20 So we can see compressing the schedule
21 even further. And we would also like to hear
22 from staff on the feasibility of moving up the FSA
23 date, perhaps before that mid-May timeframe, since
24 unlike Carlsbad, as far as issues between
25 ourselves and staff, and I'll let CURE present

1 whatever outstanding issues they have beyond the
2 greenhouse gas issue, that that's the only issue
3 that we're waiting for additional information on.

4 And so we actually think we could file
5 earlier if the Committee would be amenable and
6 staff would be amenable to receiving the MRW
7 report after the final staff assessment is filed.

8 And we have not had an opportunity to
9 discuss that procedural timing issue with staff,
10 as far as whether they would be willing to file
11 the FSA prior to the MRW report.

12 HEARING OFFICER FAY: In that scenario
13 how do you propose we deal with greenhouse gas
14 issues, or are you suggesting staff shouldn't rely
15 on the pending report to prepare their testimony?

16 MS. LUCKHARDT: No, I think the pending
17 report will be important for all folks to have in
18 the record. It is responsive to the request of
19 the Siting Committee is my understanding as what
20 they're doing.

21 We have done a kind of, what I would
22 call kind of a back-of-the-envelope system
23 analysis. And we're pretty confident that
24 whatever system analysis that comes out from MRW
25 will show a greenhouse gas benefit from this

1 facility.

2 And so there might be, you know, an
3 opportunity for all parties, including staff, to
4 comment on that report or amend the staff
5 assessment based on that. But that would kind of
6 be the outlier, that would be the last thing that
7 we would see coming in.

8 So we're not concerned actually too much
9 about what it would say. We kind of think, based
10 on kind of the preliminary analysis we've done we
11 believe that it will show a greenhouse gas
12 reduction based on the addition of this project.

13 HEARING OFFICER FAY: Okay.

14 PRESIDING MEMBER BYRON: Ms. Luckhardt,
15 it's always worth coming to these hearings because
16 I learn so much more than I knew, you know, from
17 reading all the material.

18 Seems you're well aware of contract work
19 that's being done in support of GHG analysis. Am
20 I to understand essentially that what you're
21 proposing is that we proceed with the preliminary
22 staff report and final staff report, and do all
23 the work necessary, and hold off on this one
24 particular item until essentially the report is
25 complete and staff's had time to analyze it?

1 MS. LUCKHARDT: Well, I would like to
2 move forward with as much as possible. It's my
3 understanding, or it's our understanding that the
4 report -- and, of course, we can't work directly
5 with MRW because they're under contract to the
6 staff -- but, it's our understanding, and I would
7 ask staff to correct me if I've got the
8 understanding wrong -- is that this report will be
9 done sometime in mid- to late-April, by the end of
10 April that it's supposed to be complete.

11 And it's our understanding that it's a
12 system evaluation and it would be applicable to
13 both Carlsbad and Avenal. And so it's more of a
14 broad system, as opposed to a project-specific
15 analysis. And so that would be coming in at the
16 end of April.

17 I know that staff is also working to do
18 some supplemental work on alternatives; that
19 they're going to do an alternative that is in
20 response to some public comments we received after
21 and during the PSA workshop, I think it was after
22 the PSA workshop.

23 So we know that there's a little bit of
24 work that staff is continuing to do to finalize
25 the FSA.

1 We definitely don't want the FSA any
2 later than mid-May. And we're kind of looking to
3 see whether we can push that up, and have that
4 happen earlier with the small piece on greenhouse
5 gas coming in later.

6 HEARING OFFICER FAY: Okay. Ms.
7 DeCarlo, you heard all the comments. Do you want
8 to give us staff's position and react?

9 MS. DeCARLO: Yes, thank you. We
10 understand the applicant's concern about moving
11 forward, and we're definitely interested in moving
12 forward as quickly as possible.

13 However, we want to insure that when we
14 do move forward it is as legally defensible and
15 thorough an environmental analysis as is required.

16 Ms. Luckhardt identified the MRW report
17 that we are currently waiting for. She was
18 correct in her characterization. It is a -- it
19 was first commissioned by staff for the Carlsbad
20 proceeding because the anticipation that that
21 proceeding was going to be the first one out the
22 door. Things have changed apparently and it has
23 been held up. Avenal seems to be proceeding on a
24 much quicker pace.

25 However, the MRW report is a systemwide

1 analysis, not just solely specific to Carlsbad.
2 And we believe that it'll help in our analysis of
3 determining under what situation it can be said
4 that a natural gas fired power plant will end
5 displacing older, less efficient power plants.

6 So staff believes that this will be very
7 valuable in our analysis of greenhouse gas
8 emissions.

9 I don't believe it is helpful to go
10 forward with the FSA, at least in the greenhouse
11 gas emissions analysis, without the MRW report. I
12 think it'll be an important part of our analysis.
13 And attempting to modify staff's analysis after
14 the report comes in, in the event that the
15 applicant proposes that we issue the FSA and then
16 wait for the MRW report, incorporate it
17 afterwards. I don't think that that is the most
18 efficient way to proceed. I think we should just
19 hold off on the greenhouse gas analysis for the
20 report.

21 Current timeline is about we anticipate
22 the end of April as the worst case scenario for
23 receiving the report. We've seen a draft already,
24 so it's in the process of being revised. We
25 expect maybe one or two more iterations.

1 So best case scenario may be mid-April .
2 Staff definitely would not hold up the FSA to meet
3 the deadline. If we did get the Committee to
4 agree to a June 1st deadline for the FSA, we
5 wouldn't wait until that date if we received the
6 MRW report earlier, in an earlier fashion.

7 With regard to having the applicant file
8 their testimony prior or coincidental to the FSA,
9 my one concern would be that while we seem to have
10 agreement on most of the substantive issues, there
11 are still wording issues related to some of the
12 conditions of certification that will likely have
13 to be worked out. Now, it's possible that could
14 be done in the FSA workshop and that --

15 HEARING OFFICER FAY: Okay, Ms. DeCarlo,
16 I'm sorry to interrupt you. I've got to stop for
17 now because we've lost our phone connection. And
18 we did notice that this would be available to
19 people listening in.

20 So, let's go off the record.

21 (Brief recess.)

22 HEARING OFFICER FAY: And we, I believe,
23 have our phone connections. We have a couple
24 people listening in, Ingrid Borostrom and Tracy
25 Gilliard. And we also have Anna Martinez, who may

1 like to make a comment later. But, all right for
2 now.

3 Ms. DeCarlo, representing the staff, was
4 reviewing the staff position. And I apologize for
5 interrupting you. Why don't you briefly recap and
6 then on again.

7 MS. DeCARLO: Sure. With regards to the
8 MRW analysis and how that -- the MRW report and
9 how that would fit into our analysis, as I
10 mentioned, staff would prefer to wait at least for
11 the greenhouse gas analysis -- or hold off on
12 publishing the greenhouse gas analysis until we
13 receive that report.

14 And this brings up the issue of
15 potentially bifurcation. Staff prefers not to
16 bifurcate. In general it makes it a little bit
17 more difficult for the public to follow our
18 analysis if they have to wait for several
19 different portions of it, as opposed to getting it
20 all at once.

21 However, given the circumstances, that
22 might be an option if the Committee was concerned
23 about going forward on other subject areas while
24 we waited for the MRW report.

25 With regards to the applicant's

1 suggestion about issuing their FSA testimony prior
2 to or coincidental with staff's FSA testimony,
3 it's true that the substantive issues seem to have
4 been resolved among staff and the applicant for
5 the most part.

6 How, the applicant had suggested at the
7 PSA workshop several changes to our conditions of
8 certification that staff had not had the
9 opportunity to review and discuss at the PSA
10 workshop. So there might still need to be some
11 modifications or discussion regarding the exact
12 language of certain conditions of certification.

13 That's the only impediment I would see
14 to having the applicant go forward with their
15 testimony prior to seeing staff's testimony,
16 staff's final FSA.

17 Two other items I just want to bring to
18 the Committee's attention regarding schedule.
19 While the greenhouse gas analysis has been the
20 main focus, at this point, there seem to be two
21 other items that may impact quick publication of
22 the FSA.

23 One is we're still waiting for the air
24 district's response to some questions staff had
25 regarding how they came up with their

1 interpollutant trading ratio. We anticipate to
2 receive that within the next three weeks. So we
3 should have that and be able to turn that around
4 fairly quickly. However, I just wanted to bring
5 that to the Committee's attention.

6 Additionally there seems to be some
7 confusion regarding transmission system
8 engineering, and whether or not staff has the
9 information necessary to go forward with the final
10 staff assessment.

11 We identified two items in our PSA that
12 were outstanding, and that we would like to see.
13 One of those were one-line diagrams identifying
14 the various project components.

15 And the other was a letter from PG&E or
16 Cal-ISO regarding their acceptance of the
17 mitigation identified by the applicant, the
18 preferred mitigation.

19 And so applicant and staff need to have
20 a conversation regarding whether or not those have
21 been provided to staff's satisfaction. And so if
22 that is not end up being resolved, then that would
23 also be an item we would need to have in-hand
24 before staff could publish the TSE portion of the
25 FSA.

1 HEARING OFFICER FAY: All right. Thank
2 you. And is CURE represented?

3 MS. MILES: Yes. Loulena Miles for
4 CURE. And CURE, after reviewing the PSA, we are
5 still looking forward to seeing the last bit of
6 analysis from the air district, as well as the
7 revised greenhouse gas analysis.

8 Other than that I don't believe there
9 are any live issues in dispute.

10 HEARING OFFICER FAY: Do you have any
11 revision to the status report that you filed on
12 March 6th where you identified some concerns about
13 air pollutant trading and offsets.

14 MS. MILES: Right. Those are actually
15 going to be covered in the air district's
16 submission that we're waiting for.

17 HEARING OFFICER FAY: Okay. All right.
18 So there's really nothing more than those things.
19 Okay.

20 MS. LUCKHARDT: It's our understanding
21 that the air district is going to issue that final
22 analysis by the end of the month. That's what
23 they've told us.

24 HEARING OFFICER FAY: End of this month?

25 MS. LUCKHARDT: Yes. End of March.

1 HEARING OFFICER FAY: Okay. Good.

2 All right, is there anybody here in the
3 room who would like to comment on this at this
4 time, any of these scheduling matters?

5 Okay. We do have a couple people who
6 would like to make a public comment, I understand.
7 And so I'll first ask if Anna Martinez wanted to
8 comment. Are you on the line?

9 MS. MARTINEZ: I wanted this to be on
10 the public record, as well. People in Avenal have
11 not been notified -- have not been notified about
12 this meeting taking place.

13 And although we are opposing to this
14 power plant proposal, and the discrimination that
15 continues happening with these improper meetings
16 that you guys have every single time you guys meet
17 at 2:30 when it's not providing people the
18 opportunity to attend to these meetings, as well.

19 HEARING OFFICER FAY: Okay. Thank you.
20 Anything further, Ms. Martinez?

21 MS. MARTINEZ: (inaudible).

22 PRESIDING MEMBER BYRON: Mr. Fay, is
23 there someone here that might be able to address
24 Ms. Martinez' concern about lack of notification?

25 HEARING OFFICER FAY: Do we have a

1 representative of the Public Adviser's Office
2 here? Mr. Bartsch, do you want to say anything
3 about the outreach and the communication with the
4 community?

5 MR. BARTSCH: Nick Bartsch of the Public
6 Adviser's Office.

7 HEARING OFFICER FAY: You need to come
8 up to the microphone.

9 MR. BARTSCH: We did our outreach, of
10 course, for the informational hearing and site
11 visit. This particular one was noticed by the
12 Hearing Office. And we did not do specifically
13 additional outreach for this particular hearing
14 here in Sacramento.

15 But I know we have tried to in response
16 to Ms. Martinez, I think, gave some information to
17 the Project Manager at the last workshop on
18 February 18th. And we have attempted to reach Ms.
19 Martinez on the telephone several times, leaving
20 messages for her to call us back. And we have not
21 gotten a response from her.

22 So we are trying to -- I think she
23 identified herself as a representative of Green
24 Action. So we tried to reach the Green Action
25 office in San Francisco to see if we could get

1 some information for them just to kind of bring
2 them online to participate in this project. But
3 we have not gotten a response yet.

4 That's all I can tell you.

5 HEARING OFFICER FAY: Okay. Ms.
6 Martinez, can you hear me all right?

7 MS. MARTINEZ: Yeah, I can hear you. I
8 don't know which party said that I, you know,
9 would be helping you guys or whatever, and we're
10 not here on -- San Francisco -- call down to
11 Avenal, because I get my information from Avenal.

12 HEARING OFFICER FAY: Okay. I suggest--

13 MS. MARTINEZ: We could also get that
14 information request from you guys.

15 HEARING OFFICER FAY: -- if you could
16 get in touch with the Public Adviser's Office at
17 the Energy Commission, and they can help us all do
18 a better job of reaching out, both to your group
19 and other members of your community, so that
20 everybody can be informed as this process moves
21 forward.

22 Let me just ask Mr. Bartsch right now to
23 come up to the microphone and give the 800 number
24 so you have that.

25 MR. BARTSCH: The 800 number is only a

1 message number. I'd suggest that -- but it's 1-
2 800-822-6228. And our regular number is 916-654-
3 4489. And as I said, I got the information -- we
4 got the information from the Project Manager about
5 these folks. And we have tried numerous times to
6 try to reach them. I've personally left several
7 messages on the telephone number that Ms. Martinez
8 gave. So, see if we can just bring them into the
9 process and see how we might be able to help them.

10 HEARING OFFICER FAY: Okay.

11 MR. BARTSCH: And, you know, the offer
12 is still there, obviously, to assist them in any
13 way we can.

14 HEARING OFFICER FAY: Good.

15 PRESIDING MEMBER BYRON: If I may?

16 HEARING OFFICER FAY: Sure.

17 PRESIDING MEMBER BYRON: Ms. Martinez,
18 this is Commissioner Byron. I'm the Presiding
19 Member of this Committee. Myself and Commissioner
20 Rosenfeld are making the decision -- I should say
21 be recommending the decision to the full
22 Commission.

23 And we take these kinds of concerns
24 about lack of notification very seriously. I
25 think our outreach is quite extraordinary

1 generally with this Commission.

2 I will take full responsibility for the
3 meeting time of 2:30 here on Monday. I believe it
4 was primarily in order to enable my ability to
5 attend this conference hearing.

6 But obviously you are well aware of the
7 siting case. I think you know that all the
8 information, including every public meeting that's
9 taken place has been recorded; it's available. So
10 I really hope you'll avail yourself of that
11 information. And if you're able to attend future
12 meeting, we would welcome your inclusion.

13 MS. MARTINEZ: Well, actually also the
14 community. Avenal folks are not able to attend --
15 you guys have your meetings real early. That's
16 the other problem.

17 PRESIDING MEMBER BYRON: Well, in fact,
18 addressing that, won't there be an additional
19 workshop down in Avenal? Didn't I read there's
20 plans to do another one?

21 MS. DeCARLO: Yes. We anticipate doing
22 a workshop on the final staff assessment. And we
23 will insure that at least a portion of that is
24 after work hours to accommodate the working public
25 in the area.

1 PRESIDING MEMBER BYRON: Good. Great.

2 HEARING OFFICER FAY: Thank you.

3 Anything further, Ms. Martinez?

4 MS. MARTINEZ: No, that should be it.

5 HEARING OFFICER FAY: Okay. And now I'd
6 like to ask if Ray Leon would like to make a
7 comment.

8 MR. LEON: Indeed I would.

9 HEARING OFFICER FAY: Go ahead, Mr.
10 Leon.

11 MR. LEON: Okay. Just to take it from a
12 few seconds ago, when they mention a portion of it
13 will be available for individuals that will arrive
14 after work, what does that mean exactly?

15 HEARING OFFICER FAY: Well, what that
16 would mean is that, for instance, if they have
17 eight hours of work that they anticipate, they
18 might begin in the afternoon, but then take a
19 dinner break and go on in the evening. So that at
20 least a good portion of the review could be done
21 in the evening when people could come after work.

22 MR. LEON: So, essentially that meaning
23 to take --

24 MS. DeCARLO: Yes, we had a PSA workshop
25 in which we reserved the technical issues for the

1 afternoon session. And then some of the more
2 public-oriented issues, such as air quality, for
3 the evening session. We allowed in the evening
4 session comments on all technical areas. So it
5 wasn't foreclosed in any manner.

6 HEARING OFFICER FAY: Right. Our
7 objective is to get as much information about the
8 project out to the public before the Commission
9 makes a decision on the project, so that the
10 public can send in their comments and fully
11 understand it.

12 MR. LEON: Something that I had at the
13 last meeting was that the session which would be,
14 I guess, two to three hours, that takes place
15 during the individuals' working hours is really
16 the more substantive session where questions and
17 answers and discussion takes place, concerns are
18 shared. And therefore it's much more elaborate in
19 terms of information shared and everything else.

20 And the late afternoon session, from
21 what I recall, is just merely a summary of the
22 previous session which, to me, spells out an
23 undermining of the public participation by
24 curtailing the amount of information that they
25 should be able to get at a agency hearing or

1 meeting.

2 HEARING OFFICER FAY: I appreciate your
3 concern, and I don't know if Ms. DeCarlo, who was
4 actually there at the PSA workshop, wants to
5 comment on that. But I think everybody here can
6 understand that the Committee does not want that
7 to happen.

8 While some matters might have to take
9 place before people get off work, just because
10 there's so much to review, I'm sure that our staff
11 will do a recap in the evening of what has gone
12 before in the afternoon, and be sure that people
13 have a chance to comment on any matters, including
14 things that had happened in the afternoon before
15 they could get there.

16 Ms. DeCarlo, do you want to add
17 anything?

18 MS. DeCARLO: I believe you summarized
19 it well. Unfortunately, due to time constraints
20 and the availability of other agency staff, we
21 can't simply wait until the evening timeframe to
22 conduct all of our business.

23 However, as I said before, we do try to
24 reserve the issues of most concern to the public
25 for the evening session, such as air quality,

1 public health are usually the two big ones.

2 I don't anticipate a whole lot of
3 intricate discussion at the FSA workshop, if
4 things go as it seemed to appear at the conclusion
5 of the PSA workshop. Likely this time around
6 we'll be discussing specific language matters
7 regarding conditions of certification.

8 However, we will have the most
9 substantive issues in the evening.

10 MR. LEON: I don't think a recap of
11 various of a hearing is sufficient or even
12 justifiable to creating that effective public
13 participatory -- and I understand time constraints
14 with respect to employees' hours and stuff,
15 availability.

16 But the Commission must understand that
17 this project is going to lead to a decision that
18 will impose a facility which will contaminate
19 hundreds of tons of criteria pollutants and
20 millions of tons of GHGs into this community and
21 the surrounding communities' environment.

22 And to look it as the time constraints
23 of individual staff members, which are supposed to
24 serve the public, and of an agency that is a
25 public agency, and it functions because of public

1 tax monies, we should really pay attention to the
2 concerns of the community, the public health of
3 the community, and really the impact to that
4 public health that will take place once this
5 process finishes, and if this project is permitted
6 to be imposed.

7 Then we -- I don't think there's a
8 sufficient amount of care, understanding or
9 attention to the public health concerns that the
10 community of Avenal has, and their health and well
11 being, their well being at the end of the day, or
12 that of the communities surrounding that, if it is
13 permitted, which, of course, the community of
14 Huron and primarily these three communities.

15 And so I really cannot sympathize to the
16 argument of time constraints when the health and
17 well being of a community is at stake here, which
18 is, you know, it's not the same case with staff
19 members that will not be facing those pollution
20 problems in the future.

21 HEARING OFFICER FAY: Okay. Well, thank
22 you, Mr. Leon. I just want to point out that
23 while I understand your concern about listening in
24 on the entire proceeding that may be held down
25 there regarding the final staff assessment, the

1 staff, under California law, certainly has to look
2 at any public health impacts, greenhouse gas
3 impacts and air quality and other impacts that the
4 project may have on the public.

5 So, even if they do have to do a bit of
6 their business in the afternoon, their analysis
7 will certainly have taken into account the effect
8 on people down there.

9 But we appreciate your comment, and I
10 will be sure that we discuss this further with
11 those of us who have to get the word out and
12 schedule these matters.

13 All right. Are there any closing
14 statements from the parties? Ms. Luckhardt,
15 anything further?

16 MS. LUCKHARDT: I guess the only thing
17 that I realize I didn't mention initially was that
18 staff has a very very long schedule between the
19 FSA and the hearings and the prehearing
20 conference. They have in excess of two months.

21 And I don't feel that that's necessary.
22 That's why I said that we would be willing to file
23 our testimony on the same day as the FSA is filed,
24 or as close to it as we can estimate that the FSA
25 might be filed, and if sometimes that slips for

1 production purposes, reasons.

2 But I don't see any reason why it should
3 be over two months between the FSA and the
4 hearings. And I think that that could definitely
5 be shortened in this instance.

6 So I would ask that you consider a more
7 standard schedule.

8 HEARING OFFICER FAY: Any response, Ms.
9 DeCarlo?

10 MS. DeCARLO: This schedule was mainly a
11 result of discussions internally that we've been
12 having regarding the outfall from the Eastshore
13 proceeding, and how to handle potentially
14 contentious proceedings, how best to go forward.

15 I'm not committed to the schedule by any
16 means. I'm mainly concerned about the deadline
17 for the FSA. And I definitely defer to the
18 Committee's purview in how to organize the hearing
19 process.

20 However, I do believe that it's helpful
21 to have the testimony filed prior to the
22 prehearing conference so that all parties have an
23 adequate idea of what issues are potentially in
24 contention.

25 In the past staff has been asked to file

1 a prehearing conference statement before we've
2 even seen any other parties' testimony. And it's
3 not -- we don't end up being able to contribute to
4 the discussion of how the evidentiary hearing
5 should proceed because we don't know yet at that
6 point what issues could be contended, and to what
7 extent we need to file or to have witnesses
8 present and such like that.

9 So that would be my only comment. I can
10 definitely see that, especially if other parties
11 are not disputing many of the topic areas, that
12 the schedule that has been laid out could be
13 shortened greatly.

14 HEARING OFFICER FAY: Okay. Any
15 reaction from CURE? Last chance.

16 MS. MILES: No.

17 HEARING OFFICER FAY: Okay, great. You
18 get a gold star for being brief.

19 PRESIDING MEMBER BYRON: Do we have a
20 firm date for the completion of the MRW report?

21 MS. DeCARLO: We do not. Apparently we
22 had a firm date at one point and it's already been
23 passed. I spoke with Paul Richins before this
24 prehearing conference just to get an idea, and he
25 believes a best case scenario for a public version

1 of the MRW report would be mid-April.

2 Now, obviously staff would not have to
3 wait till the public version to begin
4 incorporating the report into its analysis. So we
5 could be getting it potentially a couple weeks
6 before then. I would say worst case scenario
7 would be the end of April for a completed report.

8 PRESIDING MEMBER BYRON: Would you
9 please remind me how much time staff is assuming
10 is necessary for them to prepare testimony based
11 on that report?

12 MS. DeCARLO: I've put a month. I
13 didn't want to give a date that we could not meet.
14 However, we may be able to shorten our turnaround
15 time for that.

16 And as I said, if you did identify June
17 1st as the deadline, we would not wait for that
18 date to issue the FSA, if indeed we could complete
19 it much more quickly than that.

20 HEARING OFFICER FAY: Would you have to
21 actually see a near final draft from the MRW
22 report in order to estimate when you could file
23 the FSA?

24 MS. DeCARLO: The drafts are coming in
25 in various chapters, we haven't seen the entirety

1 of the report yet. But the first version that we
2 saw a couple weeks ago had several chapters
3 missing, several substantive chapters with data in
4 them.

5 So I don't know at what point we'll be
6 actually -- I think Paul said at the end of this
7 week we'll be receiving the last two chapters to
8 review in terms of the first round of drafts.

9 So I don't know at what point we would
10 be able to estimate when we could begin
11 incorporating the data and the information into
12 our analysis.

13 A lot of the report apparently is based
14 on scenario analysis, given various full 33
15 percent RPS. So there's a lot of data that is
16 being accumulated and interpreted. So I don't
17 know at what stage we could conclusively determine
18 that we could begin incorporating it into our
19 analysis.

20 HEARING OFFICER FAY: Is this the first
21 time staff has done this level of GHG analysis?

22 MS. DeCARLO: From a scenario
23 perspective, I believe so, yes.

24 HEARING OFFICER FAY: So, are you
25 confident that it can be done within one month of

1 getting the MRW report?

2 MS. DeCARLO: Well, the report, itself,
3 will be doing the scenario analysis. It's just a
4 matter of incorporating the conclusions from that
5 report into our analysis of Avenal.

6 HEARING OFFICER FAY: Okay. Well,
7 obviously we're interested in moving it as
8 expeditiously as possible, but we certainly want a
9 thorough analysis.

10 Can you give us a guess of when you can
11 inform the Committee of when you'll be able to
12 publish an FSA?

13 MS. DeCARLO: I mean if we had our
14 druthers we would like to see a near final version
15 of the MRW report before committing to a deadline
16 for the FSA. And that appears to be around mid-
17 April.

18 HEARING OFFICER FAY: Okay. All right,
19 that's helpful.

20 PRESIDING MEMBER BYRON: Unless there's
21 any other input that our participants would like
22 to provide?

23 MS. DeCARLO: One item, if the
24 Committee's considering bifurcation in any way, I
25 would just like to -- I didn't mention this before

1 but the GHG analysis is intricately tied to the
2 air quality analysis. So it would be helpful if
3 you did intend to bifurcate, or direct staff to
4 bifurcate the FSA, that the air quality analysis
5 would be held with the GHG analysis.

6 PRESIDING MEMBER BYRON: Okay.

7 MS. LUCKHARDT: I actually would rather
8 it not be, since that's a public concern. I know
9 that some of the folks who spoke earlier were at
10 the FSA workshop -- or PSA workshop, and they were
11 also concerned about greenhouse gas.

12 But I wouldn't want to hold up the air
13 quality analysis of criteria pollutants waiting
14 for the GHG analysis. I know that it is done
15 within the air quality section, and the same
16 individual sponsors it. But because it is a --
17 air quality tends to be a local concern, I
18 wouldn't want to hold that up.

19 HEARING OFFICER FAY: Okay, duly noted.
20 All right, we thank you all for helping us out,
21 and the Committee anticipates working on a
22 schedule. We don't have a location/date at this
23 time, but you will be hearing from us.

24 Thank you. We're adjourned.

25 (Whereupon, at 3:15 p.m., the conference

1 was adjourned.)

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I, PETER PETTY, an Electronic Reporter,
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Energy Commission Committee Status Conference;
that it was thereafter transcribed into
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I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
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IN WITNESS WHEREOF, I have hereunto set
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